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HOUSE BILL 920

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO TAXATION; AMENDING THE DEFINITION OF RESIDENT FOR
PURPOSES OF THE INCOME TAX ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986,
Chapter 20, Section 26, as amended) is amended to read:

"7-2-2. DEFINITIONS. -- For the purpose of the Income Tax
Act and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross
income as defined in Section 62 of the Internal Revenue Code,
as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part
of the estate's or trust's income defined as taxable income and
upon which the federal income tax is calculated in the Internal

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1 Revenue Code for income tax purposes plus, for taxable years
2 beginning on or after January 1, 1991, the amount of the net
3 operating loss deduction allowed by Section 172(a) of the
4 Internal Revenue Code, as that section may be amended or
5 renumbered, and taken by the taxpayer for that year;

6 (2) means, for taxpayers other than estates or
7 trusts, that part of the taxpayer's income defined as adjusted
8 gross income plus, for taxable years beginning on or after
9 January 1, 1991, the amount of the net operating loss deduction
10 allowed by Section 172(a) of the Internal Revenue Code, as that
11 section may be amended or renumbered, and taken by the taxpayer
12 for that year; and

13 (3) includes, for all taxpayers, any other
14 income of the taxpayer not included in adjusted gross income
15 but upon which a federal tax is calculated pursuant to the
16 Internal Revenue Code for income tax purposes, except amounts
17 for which a calculation of tax is made pursuant to Section 55
18 of the Internal Revenue Code, as that section may be amended or
19 renumbered; "base income" also includes interest received on a
20 state or local bond;

21 C. "compensation" means wages, salaries,
22 commissions and any other form of remuneration paid to
23 employees for personal services;

24 D. "department" means the taxation and revenue
25 department, the secretary [~~of taxation and revenue~~] or any

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1 employee of the department exercising authority lawfully
2 delegated to that employee by the secretary;

3 E. "fiduciary" means a guardian, trustee, executor,
4 administrator, committee, conservator, receiver, individual or
5 corporation acting in any fiduciary capacity;

6 F. "filing status" means "married filing joint
7 returns", "married filing separate returns", "head of
8 household", "surviving spouse" and "single", as those terms are
9 generally defined for federal tax purposes;

10 G. "fiscal year" means any accounting period of
11 twelve months ending on the last day of any month other than
12 December;

13 H. "head of household" means "head of household" as
14 generally defined for federal income tax purposes;

15 I. "individual" means a natural person, an estate,
16 a trust or a fiduciary acting for a natural person, trust or
17 estate;

18 J. "Internal Revenue Code" means the United States
19 Internal Revenue Code of 1986, as amended;

20 K. "lump-sum amount" means an amount that, for the
21 purpose of determining liability for federal income tax, was
22 not included in adjusted gross income but upon which the five-
23 year-averaging or the ten-year-averaging method of tax
24 computation provided in Section 402 of the Internal Revenue
25 Code, as that section may be amended or renumbered, was

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1 applied;

2 L. "modified gross income" means all income of the
3 taxpayer and, if any, the taxpayer's spouse and dependents,
4 undiminished by losses and from whatever source derived,
5 including:

- 6 (1) compensation;
- 7 (2) net profit derived from business;
- 8 (3) gains derived from dealings in property;
- 9 (4) interest;
- 10 (5) net rents;
- 11 (6) royalties;
- 12 (7) dividends;
- 13 (8) alimony and separate maintenance payments;
- 14 (9) annuities;
- 15 (10) income from life insurance and endowment
16 contracts;
- 17 (11) pensions;
- 18 (12) discharge of indebtedness;
- 19 (13) distributive share of partnership income;
- 20 (14) income in respect of a decedent;
- 21 (15) income from an interest in an estate or
22 trust;
- 23 (16) social security benefits;
- 24 (17) unemployment compensation benefits;
- 25 (18) workers' compensation benefits;

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- 1 (19) public assistance and welfare benefits;
- 2 (20) cost-of-living allowances; and
- 3 (21) gifts;

4 M "modified gross income" does not include:

5 (1) payments for hospital, dental, medical or
6 drug expenses whether made to or on behalf of the taxpayer;

7 (2) the value of room and board provided by
8 federal, state or local governments or by private individuals
9 or agencies based upon financial need and not as a form of
10 compensation;

11 (3) payments made pursuant to a federal, state
12 or local government program directly or indirectly to a third
13 party on behalf of the taxpayer when identified to a particular
14 use or invoice by the payer; or

15 (4) payments made pursuant to Sections
16 7-2-14, [~~7-2-14.1~~] 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

17 N. "net income" means, for estates and trusts, base
18 income adjusted to exclude amounts that the state is prohibited
19 from taxing because of the laws or constitution of this state
20 or the United States and means, for taxpayers other than
21 estates or trusts, base income adjusted to exclude:

22 (1) an amount equal to the standard deduction
23 allowed the taxpayer for the taxpayer's taxable year by Section
24 63 of the Internal Revenue Code, as that section may be amended
25 or renumbered;

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1 (2) an amount equal to the itemized
2 deductions, as defined in Section 63 of the Internal Revenue
3 Code, as that section may be amended or renumbered, allowed the
4 taxpayer for the taxpayer's taxable year less the amount
5 excluded pursuant to Paragraph (1) of this subsection;

6 (3) an amount equal to the product of the
7 exemption amount allowed for the taxpayer's taxable year by
8 Section 151 of the Internal Revenue Code, as that section may
9 be amended or renumbered, multiplied by the number of personal
10 exemptions allowed for federal income tax purposes;

11 (4) income from obligations of the United
12 States of America less expenses incurred to earn that income;

13 (5) other amounts that the state is prohibited
14 from taxing because of the laws or constitution of this state
15 or the United States;

16 (6) for taxable years that began prior to
17 January 1, 1991, an amount equal to the sum of:

18 (a) net operating loss carryback
19 deductions to that year from taxable years beginning prior to
20 January 1, 1991 claimed and allowed, as provided by the
21 Internal Revenue Code; and

22 (b) net operating loss carryover
23 deductions to that year claimed and allowed; and

24 (7) for taxable years beginning on or after
25 January 1, 1991, an amount equal to the sum of any net

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1 operating loss carryover deductions to that year claimed and
2 allowed, provided that the amount of any net operating loss
3 carryover from a taxable year beginning on or after January 1,
4 1991 may be excluded only as follows:

5 (a) in the case of a timely filed
6 return, in the taxable year immediately following the taxable
7 year for which the return is filed; or

8 (b) in the case of amended returns or
9 original returns not timely filed, in the first taxable year
10 beginning after the date on which the return or amended return
11 establishing the net operating loss is filed; and

12 (c) in either case, if the net operating
13 loss carryover exceeds the amount of net income exclusive of
14 the net operating loss carryover for the taxable year to which
15 the exclusion first applies, in the next four succeeding
16 taxable years in turn until the net operating loss carryover is
17 exhausted; in no event shall a net operating loss carryover be
18 excluded in any taxable year after the fourth taxable year
19 beginning after the taxable year to which the exclusion first
20 applies;

21 0. "net operating loss" means any net operating
22 loss, as defined by Section 172(c) of the Internal Revenue
23 Code, as that section may be amended or renumbered, for a
24 taxable year as further increased by the income, if any, from
25 obligations of the United States for that year less related

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1 expenses;

2 P. "net operating loss carryover" means the amount,
3 or any portion of the amount, of a net operating loss for any
4 taxable year that, pursuant to Paragraph (6) or (7) of
5 Subsection N of this section, may be excluded from base income;

6 Q. "nonresident" means every individual not a
7 resident of this state;

8 R. "person" means any individual, estate, trust,
9 receiver, cooperative association, club, corporation, company,
10 firm, partnership, limited liability company, joint venture,
11 syndicate or other association; "person" also means, to the
12 extent permitted by law, any federal, state or other
13 governmental unit or subdivision or agency, department or
14 instrumentality thereof;

15 S. "resident" means an individual who is domiciled
16 in this state during any part of the taxable year [~~but any~~
17 ~~individual~~] or an individual who is physically present in this
18 state for seven months or more during the taxable year; but any
19 individual, other than someone who was physically present in
20 the state for seven months or more during the taxable year,
21 who, on or before the last day of the taxable year, changed his
22 place of abode to a place without this state with the bona fide
23 intention of continuing actually to abide permanently without
24 this state is not a resident for the purposes of the Income Tax
25 Act;

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1 T. "secretary" means the secretary of taxation and
2 revenue or the secretary's delegate;

3 U. "state" means any state of the United States,
4 the District of Columbia, the commonwealth of Puerto Rico, any
5 territory or possession of the United States or any political
6 subdivision of a foreign country;

7 V. "state or local bond" means a bond issued by a
8 state other than New Mexico or by a local government other than
9 one of New Mexico's political subdivisions, the interest from
10 which is excluded from income for federal income tax purposes
11 under Section 103 of the Internal Revenue Code, as that section
12 may be amended or renumbered;

13 W. "surviving spouse" means "surviving spouse" as
14 generally defined for federal income tax purposes;

15 X. "taxable income" means net income less any lump-
16 sum amount;

17 Y. "taxable year" means the calendar year or fiscal
18 year upon the basis of which the net income is computed under
19 the Income Tax Act and includes, in the case of the return made
20 for a fractional part of a year under the provisions of the
21 Income Tax Act, the period for which the return is made; and

22 Z. "taxpayer" means any individual subject to the
23 tax imposed by the Income Tax Act."

24 Section 2. APPLICABILITY.--The provisions of this act
25 apply to taxable years beginning on or after January 1, 2003.

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